

LEGISLATIVE COUNSEL

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{ REPORT
No. 92-1098

THE FEDERAL ADVISORY COMMITTEE ACT

SEPTEMBER 7, 1972.—Ordered to be printed

Mr. METCALF, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany S. 3529]

The Committee on Government Operations, to which was referred the bill (S. 3529) to prescribe certain standards and procedures governing the establishment and operation of advisory committees in the Federal Government, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

On page 5, line 1, after the word "such" insert "advisory".

On page 11, line 21, strike "a" and insert in lieu thereof "an advisory".

On page 12, line 1, substitute the word "over" for "of".

On page 16, line 18, after the words "of the" insert the word "advisory".

On page 19, line 16, substitute "renewed" for "continued".

PURPOSE

The purpose of S. 3529 is to : strengthen the authority of Congress and the executive branch to limit the use of Federal advisory committees to those that are necessary and serve an essential purpose; provide uniform standards for the creation, operation, and management of such committees; provide that the Congress and the public are kept fully and currently informed as to the number, purposes, membership, and costs of advisory committees, including their accomplishments; and assure that Federal advisory committees shall be advisory only.

Under S. 3529, advisory committees include such committees, councils, boards, commissions, task forces, or similar groups, which are

established or organized under a statute or by the President or an officer of the Government for the purpose of furnishing advice, and which are not composed wholly of employees of the Federal Government—that is, public advisory committees.

Among other things, the bill would—

(1) require Congress to make a continuing review of existing advisory committees to determine which should be abolished, merged or revised, and to follow certain guidelines in the creation of any new committees.

(2) require the OMB to institute a comprehensive review of advisory committees and recommend reorganization or abolishment of such committees to the President; to prescribe administrative guidelines and management controls; and to report annually to Congress on the activities, status, and costs of such committees.

(3) authorize the President to assign responsibility for evaluation and action on recommendations of Presidential advisory committees, and to report on the disposition of such recommendations.

(4) provide for uniform procedures in the establishment and conduct of advisory committees. These include the filing of a committee charter, requirements of notice and public access to meetings and records, subject to certain exceptions, and the monitoring of such meetings by a Government employee.

(5) provide for the opportunity for advisory committee meetings to be closed where they deal with matters exempted from disclosure under the Freedom of Information Act; and

(6) provide for the termination of advisory committees after 2-year periods, subject to formal renewal under certain procedures.

BACKGROUND OF LEGISLATION

During the 91st Congress, the Subcommittee on Intergovernmental Relations held seven days of hearings on S. 3067, a bill introduced by Senator Metcalf. This measure would have amended the Federal Reports Act to provide for certain public representation on industry committees advising the Office of Management and Budget under its function of clearing information requests of Federal agencies. The hearings disclosed that the OMB, without statutory authority, had established close liaison with an Advisory Council on Federal Reports (ACFR) composed entirely of business officials from each of the major industries, with whom OMB consulted before approving forms, questionnaires, surveys, or investigatory requests to be circulated to such industries. Neither consumer, labor, nor small business representatives, nor the public in general, were represented on ACFR's advisory panels, nor were they invited to, nor made aware of, the meetings. Subsequently, as a result of the disclosure by the hearings, OMB agreed to give notice to interested citizens and open the advisory committee meetings to the public.

From these initial hearings into the limited area of Federal reporting and information requests, the subcommittee's interest was extended to the broader problems of advisory committees throughout the Federal Government.

On the House side, also in the 91st Congress, the Special Studies Subcommittee of the House Committee on Government Operations

conducted a broad-scale review of agency advisory bodies. In addition to five days of hearings, the subcommittee issued an extensive questionnaire to all Federal agencies and bureaus. The investigation revealed that there were an estimated 1,800 such advisory bodies in the Federal Government, costing the taxpayer about \$75 million annually, with a total committee membership of over 20,000 individuals and an assigned staff of 4,400 persons. The investigation further revealed that advisory committee reports were ignored or forgotten, that many committees existed in name only; and that there was a substantial duplication of responsibilities. Even reports of Presidential commissions, some costing well over \$1 million to develop, were found to be ignored or left without action being taken.

The report of the House Committee on Government Operations, filed at the end of the 91st Congress, entitled "The Role and Effectiveness of Federal Advisory Committees" made specific legislative recommendations for reform. These are contained in H.R. 4383, introduced on February 17, 1971 by Congressman Monagan, Chairman of the Special Studies Subcommittee, and in the bills (S. 1964 and S. 2064) introduced by Senators Roth and Percy, respectively, in this Congress.

At the same time, the Office of Management and Budget also became concerned with the proliferation and operational and procedural diversities of agency advisory committees. During hearings both in the 91st and 92d Congresses OMB informed both the House and Senate committees that it was in the process of developing a new Executive order to improve the coordination, review and management of Federal advisory committees.

In the 92d Congress, three bills relating to Federal advisory bodies were referred to the committee.

The first, S. 1637, the "Open Advisory Committee Act," was introduced by Senator Metcalf on April 22, 1971, and directed to advisory committees not composed wholly of Government employees. It set forth specific procedural requirements as to notice and openness of committee meetings, public membership, annual reporting, public inspection of records and termination of operations; and contained provisions for judicial review.

The second bill, S. 1964, the "Federal Advisory Committee Standards Act," was introduced by Senator Roth (for himself and Senator Brock) on May 26, 1971. The Roth bill was similar to legislation introduced by Congressman John S. Monagan, Chairman of the Subcommittee on Legal and Monetary Affairs of the House Committee on Government Operations, which held hearings on the role and effectiveness of Federal advisory committees. S. 1964 covered all advisory groups to the Federal Executive and to the Congress, including those composed entirely of Federal employees. In particular, it provided for a continuing review of the activities of advisory committees by appropriate congressional committees; a strengthening of the management and review function of the Office of Management and Budget in this area. It made the President responsible for reviewing, and reporting upon the activities of Presidential advisory committees, and it established procedures for committee administration and termination.

The third bill, S. 2064, the "Federal Advisory Committee Efficiency Act," was introduced by Senator Percy on June 15, 1971. It was a combination of many of the management and review functions provided in S. 1964, with the public notification and openness provisions of S.

1637. It also included certain amendments to the Federal Reports Act relating to OMB advisory committee membership, notice and openness of meetings and availability of records and a designated time period for OMB action on information requests. In addition, S. 2064 provided for the availability to the public of copies of transcripts in agency and advisory committee proceedings at the cost of duplication, as well as a section on judicial review.

S. 3529 is a clean bill which incorporates, in the committee's judgment, the best features of those three bills, and provides a logical, well-considered framework for the establishment and operation of Federal advisory committees.

One June 5, 1972, after the House had passed H.R. 4383, and after the Subcommittee on Intergovernmental Relations unanimously reported S. 3529, the President proclaimed new Executive Order 11671. This order contained to some degree concepts incorporated in S. 3529.

HEARINGS

Public hearings were held by the Senate Subcommittee on Intergovernmental Relations in 1971 on June 10, 11, 15, 17 and 22; on July 13, 27 and 28; and on October 6, 7, 8 and 11. All three bills (S. 1637, S. 1964 and S. 2064) were under consideration.

In opening the hearings, Senator Metcalf, who had been requested by Subcommittee Chairman Edmund S. Muskie to preside, set the theme of the inquiry:

What we are dealing with, in these hearings, goes to the bedrock of Government decision making. Information is an important commodity in this capital. Those who get information to policymakers, or get information for them, can benefit their cause, whatever it may be. Outsiders can be adversely and unknowingly affected. And decision-makers who get information from special interest groups who are not subject to rebuttal because opposing interests do not know about meetings—and could not get in the door if they did—may not make tempered judgments. We are looking at two fundamentals, disclosure and counsel, the rights of people to find out what is going on and, if they want, to do something about it.

Earlier, in his introductory remarks on S. 1964, on May 26, 1971, Senator Roth had said:

Advisory committees have contributed substantially to the effectiveness of the Federal Government in the past. But as the function of Government has become more complex and the decisions more difficult, numerous advisory committees have sprung up to advise the President and other decision-makers in the Federal agencies and the Congress. Over 2,600 interagency and advisory committees exist today and it is possible that this figure could be as high as 3,200.

In spite of the large number of advisory committees and their participation in the processes of government, Congress has neglected to provide adequate controls to supervise their growth and activity. As a result, the use of committees or advisory groups has come under strong attack in the press

and other media as wastes of time, money, and energy. The creation of another committee is often viewed by the public as another indication of inefficiency and indecisiveness in Government.

And Senator Percy added in his statement in the Senate on June 15, 1971, on introducing S. 2064:

There has been a growing concern about committees created to advise the executive branch. This concern has been of two kinds. First, is a belief that standards and procedures for establishing and managing advisory committees have been inadequate, and that as a result there exists a very large number of such committees, many of which have been of marginal usefulness . . . There is another kind of concern about Federal advisory committees—a belief that these committees do not adequately and fairly represent the public interest, that they may be biased toward one point of view or interest, and that their proceedings are unnecessarily closed to the public.

More than thirty witnesses testified during the twelve days of public hearings, including, among others: Senator Charles H. Percy, of Illinois; Representative John S. Monagan, Fifth Congressional District of Connecticut; Arnold R. Weber, Associate Director, Office of Management and Budget; Barry Shillito, Assistant Secretary of Defense (Installations and Logistics); Hollis M. Dole, Assistant Secretary for Mineral Resources, Department of the Interior; Larry A. Jobe, Assistant Secretary for Administration, Department of Commerce; Dr. Rodney H. Brady, Assistant Secretary for Administration and Manpower, Department of Health, Education and Welfare; Thomas E. Carroll, Assistant Administrator for Planning and Management, Environmental Protection Agency; Secor D. Browne, Chairman, Civil Aeronautics Board; Ralph Nader, consumer advocate; Jacob Clayman, Administrative Director, Industrial Union Department, AFL-CIO; Professor Henry Steck, State University of New York, College of Cortland; Professor Robert Engler, City University of New York; Dale Helmerich, President, American Public Gas Association; Harrison Welford, Center for the Study of Responsive Law; Albert H. Kramer, Executive Director, Citizens Communication Center; Reuben Robertson, Chairman, Consumer Affairs Advisory Committee, Civil Aeronautics Board; Loreto Antonellis, National Secretary, Aircraft Mechanics Fraternal Association; Robert N. Butler, M.D., Chairman, District of Columbia Advisory Committee on Aging; Robert E. Brooker, Chairman, National Business Council for Consumer Affairs; Bert S. Cross, Chairman, National Industrial Pollution Control Council; and E. D. Brockett, Chairman, National Petroleum Council.

Testimony and evidence presented at the hearings indicated that there are many Federal advisory committees, boards, and other groups which have provided a useful and beneficial means of furnishing expert advice, ideas and recommendations as to policy alternatives, and that it should not be the intent of the legislation to impair this useful function if it essentially has been, or can be, demonstrated.

However, it was also revealed that there are numerous such advisory bodies that are duplicative, ineffective and costly, and many which

have outlived their usefulness, and that neither the Federal agencies, the Executive Office of the President, nor the Congress, have developed any effective mechanisms for evaluating these advisory committees and determining which should be reorganized or abolished. Further, it was found that the executive branch lacked adequate procedures for following up on the public reports and recommendations of such committees, including Presidential advisory bodies.

In addition, the testimony disclosed that Federal advisory committees tend to operate in a closed environment, permitting little or no opportunity for the public to learn either about their deliberations and recommendations or about the information on which they base those recommendations. The lack of public scrutiny of the activities of advisory committees was found to pose the danger that subjective influences not in the public interest could be exerted on the Federal decision-makers.

SECTION-BY-SECTION ANALYSIS

FINDINGS AND PURPOSES

Section 2 states that Congress finds that the numerous committees, boards, commissions, councils and similar groups established to advise the Federal Government are frequently useful and beneficial in furnishing expert advice, ideas and diverse opinions, but that (1) the need for many existing advisory committees has not been adequately established; (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary; (3) advisory committees should be terminated when they are no longer carrying out the purpose for which they were established; (4) uniform procedures and standards are necessary to govern their establishment, operation, administration and termination; (5) Congress and the public should be kept fully and currently informed of their number and activities; and (6) the function of such committees should be advisory only.

The findings strike a balance between a wide range of attitudes about Federal advisory committees. On the one hand, there are those who would like to see most, if not all, advisory committees abolished. On the other hand, there are many who have had personal experiences with the benefits of such committees. These findings, in essence, say that advisory committees are helpful to the functioning of government, but that their number should be kept to the minimum necessary and that they must operate under uniform standards and procedures in the full view of the Congress and the public. It was this latter feature of openness that was emphasized and discussed most frequently in the hearings.

DEFINITIONS

Section 3 sets out three separate advisory committee definitions.

Section 3(1) defines the term "agency advisory committee" as any committee, council, board, commission, task force, or other similar groups, or any subcommittee or subgroup thereof, which is established or organized under any statute or by the President or any officer of the Government for the purpose of furnishing advice, recommendations, or information to any officer or agency, or to any officer or agency and

to the Congress, and which is not composed wholly of officers or employees of the Government.

Section 3(2) defines the term "Presidential advisory committee" as any committee, council, board, commission, task force or similar group, or any subcommittee or other subgroup thereof, which is established or organized under any statute or by the President for the purpose of furnishing advice, recommendations, or information to the President or the Vice President, or to the President or the Vice President and the Congress, and which is not composed wholly of officers or employees of the Government.

Section 3(3) defines the term "advisory committee" as any agency advisory committee or any Presidential advisory committee.

First. In order to avoid confusion at the outset, the reasons for having these separate definitions should be explained.

Federal advisory committees to be covered by this legislation divide into two general types based on purpose. The first type is that which is established to furnish advice, recommendations, or information to any officer or agency, or to such officer or agency and to the Congress. This is the "agency advisory committee." The second type is that which is established to furnish such advice and information to the President or the Vice President, or to them and to the Congress. This is the "Presidential advisory committee."

Sections 8 and 9 of the bill assign certain specific administrative and managerial responsibilities to agencies with respect to the establishment, renewal, reporting and record-keeping of advisory committees under their jurisdiction. Only in this limited area of management control is the term "agency advisory committee," used for purposes of legislative clarification. Likewise, section 6 of the bill assigns to the President responsibility for evaluating and taking action, as appropriate, with respect to all public recommendations made to him by "Presidential advisory committees" and sections 9 and 15 provide procedures for the establishment and renewal of both agency and Presidential committees. Again, only in these limited areas of authority are the terms used to avoid confusion.

In all other parts of the bill, such as those dealing with congressional responsibility, the review, reporting and management functions of the Office of Management and Budget, procedures for openness of meetings and the public availability of records, and the requirements for termination and renewal of committees, the general term "advisory committee" is used. Under section 3(3) of the legislation this term means "any agency advisory committee or any Presidential advisory committee," and thus except for limited managerial exceptions referred to above, all requirements of the legislation apply to agency and Presidential advisory committees alike.

This discussion is set forth for the basic purpose of dispelling any notions that there are separate sets of operational procedures for committees advising agencies and those advising the President.

A second matter for explanation with respect to the definition of advisory committees concerns their scope and character. The bill applies to advisory committees "which are not composed wholly of officers or employees of the government." This means that the legislation does not apply to the numerous interagency or intra-agency or Cabinet committees whose membership is entirely made up of government employees. The bills originally introduced by Sena-

tors Percy and Roth included such governmental advisory committees in the definition.

After analysis of the hearings and background material, it was felt that the main problems of proliferation, confusion and operational abuse lay with those advisory committees whose membership in whole or in part comes from the public sector. Further, it was felt that the matter of controlling the number and activities of inside-government committees was better left to the President, the OMB and the agencies, which had sufficient legislative and administrative authority to deal with the problem.

Third, it is well to establish the meaning of the phrase in section 3(1) and 3(2) "committees * * * established or organized * * * by any officer for the purpose of furnishing advice." What kind of committees would this bring into coverage under the legislation? The intention is to interpret the words "established" and "organized" in their most liberal sense, so that when an officer brings together a group by formal or informal means, by contract or other arrangement, and whether or not Federal money is expended, to obtain advice and information, such group is covered by the provisions of this bill. Examples of such groups are the Advisory Council on Federal Reports, the National Industrial Pollution Control Council, the National Petroleum Council, advisory councils to the National Institutes of Health, and committees of the national academics where they are utilized and officially recognized as advisory to the President, to an agency, or to a Government official.

Fourth, there are instances in which advisory committees also have operational functions, or cases in which a primarily operational unit is termed "commission" or "council," and is established as a quasi-independent unit reporting to the President directly, or through a Cabinet officer. Some, like the Advisory Committee on Opportunities for Spanish-Speaking People, and the National Commission on Productivity, perform both operational and advisory functions. In such cases, it is the responsibility of the Office of Management and Budget to determine whether such committees are primarily operational, rather than advisory. If so, they would not fall under the ambit of this bill, but would continue to be regulated under the relevant laws, subject to the direction of the President and the review of the appropriate legislative committees. This is not to indicate, however, that OMB should broadly or loosely interpret this provision to maintain in existence government "commissions" or "councils" that are no longer useful. The intent of this legislation is to eliminate as much as possible unnecessary governmental organizations.

Finally, in the definitions, the terms "agency," "officer" and "employee" came from title 5 of the United States Code. They have been chosen to give the broadest interpretation to the coverage commensurate with generally accepted principles of law.

APPLICABILITY

Section 4(a) applies the provisions of the legislation, or any rule, order or regulation promulgated under it, to each advisory committee, except to the extent any act of Congress establishing such advisory committee specifically provides otherwise. The word "specifically" is important here. Where such an act is vague or silent, the provisions of this legislation would be controlling. A major objective of this

measure is uniformity. Many statutes referring to advisory committees differ greatly in substance and detail as to the establishment, function and operations of such committees. This is an attempt to bring all advisory committees into line with basic standards and procedures.

Section 4(b) states that except as provided by Congress in section 5 of this bill, the provisions of the legislation shall not be construed to apply to any standing, special or joint committee of the Congress, any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

These exceptions are based on the premise that it would be unwise both administratively, and even constitutionally, for Congress to impose Federal standards as to advisory bodies created at the State and local level.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

Section 5(a) establishes a legislative review function for each standing committee of the Senate and House with respect to advisory committees under its jurisdiction. Such standing committee shall determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each standing committee is required to pursue appropriate action through legislation to carry out the changes it determines should be made.

This provision relates closely to those contained in S. 1964 and S. 2064 as well as H.R. 4383. It builds on the assumption that where legislative committees find the need for an advisory committee, they should assume a continuing legislative review function over such committee.

Section 5(b) establishes certain guidelines to be followed by any congressional committee considering legislation which establishes advisory committees. It shall determine and report on whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. In addition, its legislation shall (1) contain a clearly defined purpose for the advisory committee; (2) require that membership of the advisory committee shall be representative of those who have a direct interest in the purpose of such committee; (3) contain a date for submission of any report, specify the duration of the advisory committee and the publication of reports and other materials, and, where appropriate, provide authorization for, and any limitation upon, the use of subpoenas; and (4) contain provisions to assure that the advisory committee will have adequate staff, office space, and other resources to operate effectively.

This, with minor exceptions, follows S. 1964 and S. 2064 and the House legislation, except that an additional required finding has been added with respect to whether or not the proposed advisory function would, or could not be, performed by one or more Federal agencies. Very often agencies have an in-house capacity equal to or even better than that which could be obtained by forming an additional committee

at extra cost. Indeed, this concept of looking to government personnel for advice, information and recommendations would be a way of cutting down the number of advisory committees.

RESPONSIBILITIES OF THE PRESIDENT

Section 6(a) provides that the President may assign to the Domestic Council or other agency, the responsibility for evaluating and taking action, as appropriate, on public recommendations made to him by Presidential advisory committees. This is one of the sections in the legislation which occasioned the need for a separate definition of the term "Presidential advisory committee."

Section 6(b) requires that the Domestic Council, or such other agency to which the President has assigned responsibility for public recommendations of a Presidential advisory committee, shall transmit to the President and to the Congress, within six months of its receipt of the recommendations, a public report containing its views on the recommendations and setting forth proposals for action with respect to the recommendations or its reasons for proposing that no action be taken.

Taken together, these provisions seek to remedy a recurring problem that has been identified both by the House Special Studies Subcommittee investigation, and by hearings held by the Subcommittee on Administrative Practices and Procedures, of the Senate Judiciary Committee. In various instances, past and present, evidence shows that Presidents ignore and reject Presidential committee reports, or if they accept them provide no followthrough. This legislation does not seek to force the President into a position of direct action on such reports. It merely says that the Domestic Council, as one of the President's major policy advisory arms, should evaluate the recommendations and studies of Presidential advisory bodies, where appropriate, and report to the President and the Congress on what should be done to implement the proposal or not be done, and why. In this way many millions of dollars in Presidential commission activity may not be lost to the archives.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Section 7 contains provisions designed to establish a management, review and reporting system in the OMB to come to grips with the burgeoning problems of proliferating and fragmented administration that exists in the Federal advisory committee system.

Section 7(a) requires the Director of OMB to establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

Section 7(b) further requires the Director to institute a comprehensive review of the activities and functions of each advisory committee to determine (1) whether such committee is carrying out its purpose; (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised; (3) whether it should be merged with other advisory committees; and (4) whether it should be abolished. The Director is authorized to request such information as he deems necessary to carry out his functions under this subsection.

Upon the completion of the Director's review he is required to make recommendations to the President, the agency head, or the Congress, as the case may be, with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually.

Section 7(c) prescribes the management function of the Director. He shall establish administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance and guidance to advisory committees to improve their performance. In carrying out those functions, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of such advisory committees.

Section 7(d) continues the management function with respect to uniform rates of pay for comparable services. After study and consultation with the Civil Service Commission, he shall establish regulations with respect to such pay of members, staffs, and consultants of advisory committees. Such regulations shall provide that no member of any advisory committee or an advisory committee's staff shall receive compensation in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code; and that such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service. These requirements, of course, apply to compensation and travel expenses (including per diem) paid by the U.S. Government to members, staff and consultants. It is not intended that they apply to advisory committees whose funding comes wholly from sources outside the Federal Government.

However, nothing herein would limit any individual who, without regard to his service with an advisory committee, is a full-time employee of the Federal government, or was such an employee immediately before such service, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

Section 7(e) provides the Director with authorization for requesting funds for the expenses of advisory committees, including expenses for publication of reports.

Section 7(f) is an important provision. It concerns the procedure for OMB reporting to Congress on an annual basis on the present situation with respect to advisory committees. It requires that not later than March 31 of each year, the Director transmit a report to the Congress on the activities, status, and changes in the composition of advisory committees during the preceding calendar year. Such report shall be published in the Federal Register.

The provision further requires that the report shall contain the name of each such advisory committee, classified by the official or agency to which it reports, the date of and authority for its establishment, its functions, a reference to the reports it has submitted during the preceding calendar year, a statement of whether it is an ad hoc or continuing body, the dates of its meetings during the preceding calen-

dar year, the names, addresses, and affiliations of its current members, and the total estimated annual cost to the United States to fund, service, supply and maintain such committee. Such report shall include a list of advisory committees which the Director has recommended be abolished, together with his reasons therefor, together with an account of any action taken. It is specifically provided that the Director shall exclude from this report any information which, in his judgment, may compromise the national security, and he shall include in such report a statement that such information is excluded.

The only significant changes in the provisions of section 7 from those of S. 1964 and S. 2064 is that the language was tightened up to make the Director of OMB responsible for reviewing, reporting upon, and establishing guidelines (in accordance with the legislative standards) for all advisory committees whether they be agency or Presidential. The center of administrative responsibility has been placed squarely with the OMB, and the Federal agencies are subordinate to the OMB in their management function. Likewise, Presidential advisory committees look to the OMB for guidelines and assistance in their role as advisors to the President.

This would provide for more efficient and effective operation of these critical management functions.

RESPONSIBILITY OF AGENCY HEADS

Section 8 establishes a second line of management coordination and control over the establishment and activities of advisory committees at the agency level. This is the section where the reference to "agency advisory committees" is made, as explained in the definition section.

Section 8(a) provides that each agency head shall establish uniform administrative guidelines and management controls for agency advisory committees established by that agency head, which shall be consistent with directives of the Director under section 7. A uniform informational system relating to agency advisory committees and their operation shall be maintained within each agency.

Section 8(b) provides that each agency head shall designate an Advisory Committee Management Officer who shall (1) exercise control and supervision over the establishment, procedures, and accomplishments of agency advisory committees established by that agency; (2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and (3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code (the Freedom of Information Act), with respect to such reports, records, and other papers.

The introduction here of the Advisory Committee Management Officer is supplementary to the provisions of S. 1964 and S. 2064. It was felt that such a counterpart role was needed in order to assure effective liaison with OMB, and more effective supervision at the agency level.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

Section 9 is the first of three sections dealing with the establishment, operation and procedural requirements of advisory committees. Prior sections of the legislation have related to the review and management

function of the executive branch in developing a coordinated well managed advisory committee system.

Section 9(a) provides that no advisory committee shall be established unless such establishment is (1) specifically authorized by statute or by the President or (2) determined as a matter of formal record by the head of the agency involved, after consultation with the Director of OMB, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

This means that no such committee can be established by any Government official, employee, or agency, be funded, or given any official recognition, unless one of three conditions is met: it is authorized by statute; it is authorized by the President; it is determined and approved by the head of an agency, after specific notice, to be in the public interest. It should be emphasized that although these primary conditions apply to advisory committees established subsequent to passage of the legislation, it is the intention that they also apply to the renewal of such committees at the expiration of their 2 year duration as provided for in section 15 (Termination of Advisory Committees).

The House subcommittee study and the Senate hearings disclosed that there have developed a plethora of advisory bodies among the agencies, their bureaus and divisions, initiated in part under limited, if not questionable authority, meeting infrequently, and serving no significant advisory purpose. By tightening up the authorization process, it is felt that the trend toward bureaucratic proliferation of advisory committees could be arrested and, perhaps, turned around. Furthermore, by providing the requirement of "timely notice published in the Federal Register," the public and the Congress would have the opportunity to challenge the establishment of such committees they felt were not necessary or were not relevant.

Section 9(b) implements one of the basic findings set forth in section 2 of the bill. It requires that unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Government.

Experience has shown, said Congressman Monagan, that the "system of advisory committees that has grown up over the years might well be described as a fifth arm of the Government, existing alongside the executive, legislative, judicial and regulatory arms. There is a growing awareness that an invitation to advise can by subtle steps confer the power to regulate and legislate."

A number of committees observed by both the House and Senate inquiries have been allowed to take on a quasi-decision-making status for a variety of reasons which may include neglect, prestige, technical expertise, academic competence, industry pressure, or even political feasibility. The Federal decision-maker is, in the final analysis, his own counsel. He, like his President, is solely responsible for the execution of Federal policy. His role and the powers of this responsibility are protected by the United States Constitution. Any delegation

of such role and powers to persons or committees not invested with executive authority is a derogation of our constitutional system.

Section 9 (c) provides an additional condition to the operation of advisory committees. It states that no advisory committee shall meet or take any action until a committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of agency to whom any agency advisory committee reports and with the standing committees of the Senate and of the House of Representatives which have legislative jurisdiction of such agency.

Such charter, among other things, shall contain the following information: the committee's official designation; objectives and the scope of its activity; the period of time necessary for it to carry out its purposes; the agency or official to whom the committee reports; the agency responsible for providing the necessary support for the committee; a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions; the estimated annual operating costs in dollars and man-years for such committee; the estimated number and frequency of committee meetings; the committee's termination date, if less than two years from the date of the committee's establishment; and the date the charter is filed.

A copy of this charter is to be furnished to the Library of Congress, and shall be on file for inspection by the public. This provision is intended to provide the basis for the continuing agency and OMB reviews required in previous sections. If agencies are required to establish formal procedures including the filing of charters, and a management officer to oversee the operation of advisory committee under such charters, their own, and OMB's management effort would be materially facilitated.

As will be covered later under section 13, any advisory committee whose authority is renewed under the provisions of that Section, shall file such a charter. This applies to all advisory committees, agency, Presidential; and those established by Statute or otherwise.

The requirements will provide additional assistance to the Congress and to the public in identifying responsibilities and effectiveness of advisory committees.

ADVISORY COMMITTEE PROCEDURES REQUIRING PUBLIC NOTIFICATION AND PROVISION FOR PUBLIC PARTICIPATION

Section 10 is one of the key sections in the legislation. It establishes the standard of openness in advisory committee deliberations, and provides an opportunity for interested parties to present their views and be informed with respect to the subject matter taken up by such committees. It also provides for closed deliberations under certain specific conditions and procedures. However, the intention of this legislation is that the standard of openness and public inspection of advisory committee records is to be liberally construed.

Section 10(a) requires that (1) each advisory committee meeting shall be open to the public; (2) timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto;

and (3) interested persons shall be permitted to appear before or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

Section 10(b) requires that the records, including any reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee, shall be made available for public inspection and copying. Such records shall be maintained at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

Section 10(c) requires that transcripts or minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by such advisory committee, and that the accuracy of all minutes shall be certified by the chairman of the advisory committee. In describing the matters discussed and the conclusions reached, it is intended that the minutes be sufficiently detailed to include an ample summary of the discussion and references to documents and materials used, presented or discussed at the meeting.

Section 10(d) (1) provides that the requirements of open meetings and public disclosure of documents contained in subsections (a), (b), and (c) shall not apply where the President or the head of the agency to which the advisory committee reports, determines such advisory committee meeting is concerned with matters referred to in section 552(b) of title 5, United States Code (the Freedom of Information Act). Any such determination by the President or the head of the agency shall be in writing and shall be published prior to the meeting in the Federal Register together with the reasons for such determination.

Those exemptions referred to in the Freedom of Information Act, and applicable to this legislation are matters that are—

- (1) specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;
- (8) contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (9) geological and geophysical information and data, including maps, concerning wells.

Section 10(d) (2) requires that a verbatim transcript shall be taken of any meeting which the President or the head of the agency determines to be closed under subsection (d) (1). In those cases where the usual stenographic verbatim transcript may be too costly to an agency because of an unduly large number of advisory committees or number of meetings, an electronic recording may be substituted. However, such recording must be a verbatim transcription of the meeting, and properly identify persons speaking, and documents and materials used during the meeting.

Section 10(d) (3) provides that any person aggrieved by a determination by the President or the head of an agency under subsection (d) may file an action under section 552(a) (3) of title 5, United States Code. This is designed to provide a judicial means by which an aggrieved person can obtain the documentary material developed by the advisory committee, including any transcripts taken.

Under section 552(a) (3) of the Freedom of Information Act, a Federal district court has jurisdiction to enjoin the withholding of records and may issue orders for their production. In such a case the court determines the matter *de novo* and the burden is on the Federal agency to sustain its action.

Sections 10(a) through (d) are, in a very real sense, a compromise between the mandatory requirements of openness and public participation contained in S. 1637 and the permissive agency option for public access contained in S. 2064 and S. 1964.

Under S. 1637 the membership of all advisory committees was to be revamped to include at least one-third of the members from private life to represent the interests of the public with respect to the subject matter of the committee. This was to ensure a direct public participation, *ab initio*, in the organization and activities of the advisory committee. S. 1637 also required that all advisory committee meetings (with the exception of those dealing with national security and intelligence matters) be open to the public, and that a verbatim transcript be taken at each such meeting.

There was considerable opposition to this approach, particularly from agencies whose committees dealt with such issues as national defense and foreign policy, trade secrets, matters relating to the regulation and supervision of financial institutions and markets, and information concerning the competence and character of individuals, such as that taken up by the grant review committees of the National Institutes of Health, the National Science Foundation, and NASA.

However, the weight of the evidence obtained through the hearings and additional study indicated that there was substantial merit in opening advisory committee deliberations and documentation to the public, particularly with respect to business advisory bodies, where the potentials for special interest pleading and abuse were more apparent.

Thus S. 1637 was modified to eliminate the one-third public membership requirement, but to keep the provisions for open meetings, timely notice, and the opportunity for the public to appear before advisory committees and file statements as well as inspect and copy advisory committee records.

Such guarantee of public participation was qualified, however, by permitting the President or agency head to waive the application of openness, where it was determined in writing and published prior to the advisory committee meeting that matters to be taken up come within certain specific exemptions set forth in section 10(d) (1). The exemp-

tions under the Freedom of Information Act were chosen because they had received the most thorough scrutiny and consideration by the Congress in this sensitive area between public disclosure and privileged information. Further, they seemed to meet most of the objections raised as to openness during the hearings.

It is to be emphasized that in no manner is there any intention in this legislative language to modify, amend, or otherwise affect the meaning and effect of the Freedom of Information Act. Section 552(b) of title 5 is used for reference purposes only. The law which has been developed by the cases in interpreting that provision would be binding on the President or agency head in making its determination.

Section 10 (e) and (f) concern the conduct of advisory meetings under the supervision of a government officer. Section 10(e) provides that advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated governmental official and in the case of an agency advisory committee, with an agenda approved by such official.

Section 10(f) (1) provides that there must be designated an officer or employee to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

Section 10(f) (2) provides that no advisory committee shall receive, compile, or discuss information concerning the current or projected commercial operation of identified business enterprises. Whenever it appears to the officer or employee designated under paragraph (1) that such information is being received, compiled or discussed, he shall promptly adjourn such meeting.

These provisions are here for a basic purpose: to assure that a Federal official will be available at all times to supervise and monitor the activities and discussions of the committee members, and particularly to guard against possible antitrust violations and conflicts of interest. This is added insurance against potential abuse of the advisory privilege, particularly where the meetings are closed under appropriate authority.

However, the provisions are not intended to be used to restrict or interfere with the legitimate functions of advisory committees, such as, for example, those committees charged by statute with the responsibility for reviewing and evaluating Federal agency programs. Nor should these procedural requirements be used to prevent the consideration of matters of proper concern to an advisory committee.

AVAILABILITY OF TRANSCRIPTS

Section 11(a) provides that except where prohibited by contractual agreements entered into prior to the effective date of the legislation, both agencies and advisory committees shall make available to any person, at the actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

Section 11(b) defines the term "agency proceeding." Referring to 5 U.S.C. 551(12), the definition includes the processes of rule making, adjudication and licensing.

The problems of a citizen being able to obtain a copy of agency transcripts at a reasonable expense has been a perennial complaint at hear-

ings conducted by subcommittees of the Senate Government Operations Committee and of other standing committees. Agencies have traditionally made contracts with stenographic services which contain strong prohibitions against duplication, but little if any restrictions against the purchase of such transcripts from the contractor at the commercial rate—which in nearly all cases is prohibitory to average persons.

Stenographic services say they need this protection in order to make a profit on the extension of their services. Complainants say that they are deprived of their rights to know and to obtain due process of law when they are not allowed to copy public records of proceedings at the cost of duplication.

S. 2064 resolved this issue in favor of the average citizen, and, with certain minor modifications, the requirements of transcript availability have been included here.

COLLECTION OF INFORMATION

Under section 3509 of title 44, United States Code (the Federal Reports Act), a Federal agency may not conduct or sponsor the collection of information from more than nine persons (other than Federal employees) unless the agency submits the request to the Director of OMB for clearance, and the Director states that he does not disapprove the proposed collection of information.

Evidence at hearings in the 91st Congress before the Subcommittee on Intergovernmental Relations on S. 3067, introduced by Senator Metcalf, to provide for public representation on OMB business advisory committees advising on the clearance of such information requests, pointed up the issues presented here.

OMB had extended its interpretation of the Federal Reports Act to include virtually all investigatory requests or surveys of regulatory and other agencies, and in a number of cases, was refusing clearance, or holding up decisions based on ex parte communication with the subjects of the investigations.

Section 12 would require that a determination of disapproval by the Director be accompanied by a full statement of the reasons therefor, and that any information request submitted to the Director for clearance be acted on within ninety days of receipt of his approval will be presumed.

Such an amendment, it is believed, will go a long way in reducing some of the most troublesome obstacles to proper agency investigation and data collection.

FISCAL AND ADMINISTRATIVE PROVISIONS

Section 13 contains provisions for identifying and controlling advisory committee expenditures and for providing supporting services to advisory committees. It authorizes advisory committees to request from agencies information necessary to carry out its functions.

Section 13(a) provides that each agency shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of agency advisory committees it establishes or which report to it, as well as the nature and extent of the committee's activities in carrying out its functions. The Administrator of General Services shall maintain such records with respect to Presidential advisory com-

mittees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

Section 13(b) requires each agency to be responsible for providing support services for each agency advisory committee established by or reporting to it unless the establishing authority provides otherwise. However, where any such committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services shall be provided by the General Services Administration.

Section 13(c) states that each advisory committee is authorized to request from any agency any information it deems necessary to carry out its functions, and each agency is authorized to furnish such information to such committee upon an official request therefor. It is not the intention of this subsection to convey any special or exclusive authority of access to any agency information where such access would under law and regulations be considered to be privileged or against public policy to make known to a particular advisory committee. What should or should not be made available is up to the agency controlling the information, subject to review by the President.

ADVISORY COMMITTEE REPORTS AND OTHER MATERIALS

Section 14 is similar to provisions existing in each of the three original bills, S. 1637, S. 1964, and S. 2064, which would require that copies of the documents of advisory committees be submitted to the Library of Congress and that they be made available for public inspection. The provisions of section 14 were refined and expanded somewhat as a result of information supplied to the Subcommittee on Intergovernmental Relations by the Director of the Congressional Research Service of the Library of Congress. He emphasized the need for at least six copies of each advisory committee report, and suggested that this requirement apply to agency as well as Presidential advisory committees.

Section 14(c) requires that no later than thirty days after the transmission of any report by an advisory committee, that committee shall send to the Library of Congress at least six copies of such report. Upon the termination of any advisory committee such committee shall transmit to the Library of Congress copies of reports, records, studies and any other documents as the Librarian of Congress may request.

Section 14(b) would require the Librarian of Congress to establish a depository for all reports and other materials which he might receive under section 14(a). These reports and materials shall be made available for public inspection and copying. However, the Librarian shall establish procedures to restrict such availability in the case of classified reports or other materials.

TERMINATION OF ADVISORY COMMITTEES

Section 15 establishes the mechanism for the termination of useless advisory committees. This section originates as a result of recommendations contained in a House report on the "Role and Effectiveness of Federal Advisory Committees" prepared by the Special Studies Subcommittee of the House Government Operations Committee. In their report the subcommittee emphasized that adequate requirements do

not presently exist to provide for the termination of inactive, meaningless, obsolete and redundant advisory committees.

Section 15(a) (1) provides that every advisory committee which is in existence on the effective date of this Act shall terminate not later than December 31, 1973. However, in the case of an advisory committee established either by the President or by an officer of the Government, such advisory committee may be renewed by appropriate action of the proper authority prior to December 31, 1973. Also, in the case of an advisory committee established by an Act of Congress, the termination date of December 31, 1973, shall not apply if its termination is otherwise provided by law.

Section 15(a) (2) provides that each advisory committee which is established after the effective date of this Act shall terminate not later than the expiration of a two-year period beginning on the date it is established. However, in the case of an advisory committee established either by the President or by an officer of the Government, such advisory committee may be renewed by appropriate action of the proper authority prior to the end of the two-year period. Also, in the case of an advisory committee established by an Act of Congress, such advisory committee shall not terminate at the expiration of a 2-year period beginning on the date it is established, if such termination is otherwise provided by law.

These provisions are a modification of the termination provisions contained in S. 1637, S. 1964, and S. 2064 and are essentially the same as those contained in the legislation under consideration by the House Government Operations Committee. They are built on the subcommittee's findings that there is an acute need to diminish the number of useless advisory committees and control their proliferation. If an advisory committee is providing a necessary function, however, it may of course be continued.

Section 15(b)(1) provides that any advisory committee which is to be renewed shall file a new charter in accordance with section 9(c). Section 15(b)(2) states that any advisory committee which is established by an Act of Congress shall file a charter in accordance with section 9(c) upon the expiration of each successive two-year period following the date of enactment of the Act establishing the advisory committee. Section 15(b)(3) further provides that no advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which the charter is filed.

Section 15(c) states that any advisory committee which is reviewed by the President or any officer of the Government may be continued only for successive two-year periods by appropriate action taken by the appropriate authority prior to the date on which such advisory committee would otherwise terminate.

The provisions in section 15 (b) and (c) were added mainly for administrative purposes. It was felt that such a charter renewal requirement would provide continuing assistance to the President and the agency heads in their attempt to identify the responsibilities and effectiveness of advisory committees.

EFFECTIVE DATE

Section 16(a) states that except where provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

The ninety-day period was provided as a transition period to allow the agencies to gear up. The provisions of section 7(b) are to go into effect immediately upon enactment of this Act in order to allow the Director of OMB to institute immediately a comprehensive review of the activities and responsibilities of all advisory committees.

Section 16(b) states that the report, which is required under section 7(f) to be prepared by the Director for Congress on the activities, status and changes in composition of advisory committees, be transmitted not later than March 31 of the year following the first calendar year after the date of enactment of this Act.

ESTIMATED COST OF LEGISLATION

Due to the nature of the legislation which covers a broad field of Government departments and agencies, and the very large number of existing committees, an estimate of costs is not possible. However, as a result of the elimination of some committees, the consolidation of others, and the widening of the mandate of still others to areas of need, the committee feels substantial savings could accrue.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic; existing law in which no change is proposed is shown in roman).

The bill amends 44 U.S.C. 3509, plans or forms for collecting information; submission to Director; approval; to wit:

TITLE 44.—PUBLIC PRINTING AND DOCUMENTS

Chapter 35.—COORDINATION OF FEDERAL REPORTING SERVICES

* * * * *

§ 3501. Information for Federal agencies

* * * * *

§ 3509. Plans or forms for collecting information; submission to Director; approval

(a) A Federal agency may not conduct or sponsor the collection of information upon identical items, from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection:

(1) the agency has submitted to the Director the plans or forms, together with copies of pertinent regulations and of other related

materials as the Director of the Bureau of the Budget has specified; and

(2) the Director has stated that he does not disapprove the proposed collection of information.

(b) A determination of disapproval by the Director shall be accompanied by a full statement of the reasons therefor.

(c) Any collection of information which has been referred to the Director of the Office of Management and Budget for his approval under section 3506 of this title or under subsection (a) of this section shall be acted upon within ninety days or such approval shall be presumed.

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